AHMAD MD DAUD & ANOR A

v.

CHE YAH MAN

COURT OF APPEAL, PUTRAJAYA B
GOPAL SRI RAM FCJ
SULONG MATJERAIE JCA
AHMAD MAAROP JCA
[CIVIL APPEAL NO: K-02-674-2006]
8 JUNE 2009 C

LAND LAW: *Indefeasibility of title and interests - Forged transfer - Transferee in good faith and for valuable consideration - Whether transferee failed to get title due to nature of transaction entered into - Adorna Properties Sdn Bhd v. Boonsom Boonyanit - National Land Code, s. 340(3)* D

In 1948, the appellants' mother had entered into an agreement with the original owners of a piece of land wherein she was given possession of the land for the purpose of cultivating it for a period of three years. The appellants' mother paid a consideration of 250 rial (straits dollars) to the original owners. Possession was to revert to the original owners on re-payment of the 250 rial and the expenses incurred by the mother in cultivating the land. In the event the original owners defaulted, they were to sell the land to the appellants' mother at a price to be determined by the parties, credit being given to the sum already paid and the monies expended by her. It transpired that the original owners did not adhere to the terms of the 1948 agreement and sold the land to a third party. The land then passed through several hands until the respondent purchased it in November 1997 and had it registered it in her name. The appellants then enlisted the assistance of one Azmi Ahmad to have the subject land vested in their names. The said Azmi produced a forged order of the High Court and had the appellants registered as the proprietors of the land. The appellants were ignorant of the fact that the order was a forgery. When the respondent found out, she brought proceedings against the appellants to be reinstated. The learned judge found for the respondent and the appellants' appealed. The appellants relied on the fact that they had acted *bona fide* and cited the case of *Adorna Properties Sdn Bhd v. Boonsom Boonyanit* in support of their argument that they had acquired an indefeasible title to the land.

E F G H I

Held (dismissing the appeal)
Per Gopal Sri Ram FCJ delivering judgment of the court:

(1) The proviso to s. 340(3) National Land Code ('NLC') applied only to a purchaser. That expression was defined by s. 5 of the same as "a person or body who in good faith and for valuable consideration acquires title to, or any interest in land". Hence, to be a purchaser one had to acquire title, act in good faith and also provide valuable consideration. (para 3)

(2) The appellants' mother had given valuable consideration for the land, *ie*, a princely sum of 250 rial at the material time. However, she might have acquired the title to the land if she had entered an agreement to purchase it. Such an agreement would have been specifically enforceable and therefore made the original owners constructive trustees of the land for the mother. But that was not the nature of the transaction entered into. The mother, therefore, did not acquire the title to the land. The appellants resting their case on the footing that they were their mother's successors in title could not be in a better position than the mother. (para 5)

(3) The proviso to s. 340(3) NLC only applied in the following way. *A* by means of a forged instrument obtained title to land. His title was defeasible and might be defeated by the true owner. *A* transferred the land to *B* who paid *A* and took the transfer of title without notice of the forgery. *B* obtained good title to the land against the whole world including the true owner. That did not happen in the present case. The learned judge was therefore correct in adopting the procedure he did and in finding for the respondent. (para 6)

Bahasa Malaysia *Translation Of Headnotes*

Pada tahun 1948, ibu perayu-perayu telah memasuki satu perjanjian dengan pemilik-pemilik asal sebidang tanah di mana beliau telah diberi milikan untuk mengusahakannya bagi tujuan penanaman dalam tempoh masa tiga tahun. Ibu telah membayar balasan sebanyak 250 rial (wang selat) kepada pemilik-pemilik asal. Milikan akan dikembalikan kepada pemilik-pemilik asal apabila 250 rial itu dibayar kembali kepada ibu termasuk pembelanjaan yang dibiayai ibu dalam mengusahakan tanah tersebut. Jika pemilik-pemilik asal ingkar perjanjian tersebut, mereka mesti menjualkan tanah tersebut kepada ibu dengan harga yang ditentukan oleh

pihak-pihak berkenaan mengambilkira bayaran 250 rial dan pembelanjaan berkenaan. Ianya mengikut bahawa pemilik-pemilik asal tidak mengikuti terma-terma perjanjian 1948 dan menjual tanah tersebut kepada pihak ketiga. Tanah tersebut kemudiannya melalui beberapa tangan sehingga responden membelikannya pada bulan November tahun 1997 dan mendaftarkannya di bawah nama sendiri. Perayu-perayu kemudiannya mendapatkan bantuan seorang Azmi Ahmad bagi tujuan meletakhak tanah tersebut di bawah nama mereka. Azmi tersebut dengan satu perintah Mahkamah Tinggi palsu mendaftarkan perayu-perayu sebagai tuan punya tanah tersebut. Perayu-perayu tidak mengetahui bahawa perintah tersebut adalah palsu. Apabila responden dapat mengetahuinya, beliau membawa prosiding terhadap perayu-perayu untuk mengembalikan kedudukannya sebagai tuan punya tanah tersebut. Yang arif hakim telah berpihak kepada responden dan perayu-perayu merayu. Perayu-perayu bergantung kepada fakta bahawa mereka telah bertindak *bona fide* dalam transaksi berkenaan dan menamakan kes *Adorna Properties Sdn Bhd v. Boonsom Boonyanit* untuk menyokong hujahan mereka bahawa mereka telah memperolehi hakmilik tanah tersebut yang tak boleh sangkal.

Diputuskan (menolak rayuan)
Oleh Gopal Sri Ram HMP menyampaikan penghakiman mahkamah:

(1) Proviso kepada s. 340(3) Kanun Tanah Negara ('KTN') terpakai hanya kepada 'pembeli'. Ungkapan itu telah didefinasikan oleh s. 5 yang sama sebagai seorang atau badan yang, dengan niat baik dan untuk balasan bernilai memperolehi hakmilik kepada, atau mana-mana kepentingan dalam tanah. Maka, untuk menjadi seorang pembeli, seseorang itu mesti memperolehi hakmilik, bertindak dengan niat baik dan juga memberi balasan bernilai.

(2) Ibu perayu-perayu telah memberi balasan bernilai untuk tanah tersebut iaitu sejumlah 250 rial yang merupakan jumlah mahal pada masa material itu. Namun, beliau mungkin memperolehi hakmilik tanah tersebut jika beliau memasuki satu perjanjian untuk membelikannya. Perjanjian seumpama itu boleh dikuatkuasakan sekhususnya dan pemilik-pemilik asal dijadikan pemegang-pemegang amanah konstruktif tanah tersebut bagi pihak ibu. Tetapi transaksi bukan seperti itu. Maka, ibu tidak memperolehi hakmilik tanah tersebut. Perayu-perayu yang

bergantungkan kes mereka atas dasar mereka waris ibu dalam hal hakmilik tanah tersebut tidak boleh berada dalam kedudukan melebihi kedudukan ibu mereka.

(3) Proviso kepada s. 340(3) KTN hanya terpakai dalam keadaan begini. *A* dengan satu suratcara palsu memperolehi hakmilik tanah. Hakmiliknya boleh disangkal dan mungkin boleh dikalahkan oleh pemilik sebenar. *A* memindahkan tanah tersebut kepada *B* yang membayar *A* dan mengambil pemindahan hakmilik itu tanpa notis pemalsuan. *B* telah memperolehi hakmilik baik tanah bertentangan seluruh dunia termasuk pemilik sebenar. Namun, keadaan begitu tidak berlaku dalam kes semasa. Maka, yang arif hakim betul memakai prosedur yang diambilnya dan berpihak kepada responden.

Case(s) referred to:

Abu Bakar Ismail & Anor v. Ismail Husin & Ors & Other Appeals [2007] 3 CLJ 97 CA ***(refd)***

Adorna Properties Sdn Bhd v. Boonsom Boonyanit [2001] 2 CLJ 133 FC ***(refd)***

Au Meng Nam & Anor v. Ung Yak Chew & Ors [2007] 4 CLJ 526 CA ***(refd)***

Midland Bank Trust Co Ltd v. Green [1981] AC 513 ***(refd)***

Legislation referred to:

National Land Code, s. 5, 340(2)(b), (3)

Land Charges Act 1925 [UK], s. 20(8)

For the appellants - Jegadeeson Thavasu; M/s Jega Kumar & Partners
For the respondent - N Shanmugavadivelan; M/s Yazeer Akhbar Majid & Co

[Appeal from High Court, Alor Star; Civil Appeal No: 22-09-2002]

Reported by Usha Thiagarajah

JUDGMENT

Gopal Sri Ram FCJ:

[1] The facts that lie at the nub of the dispute in this case are not in dispute. The subject matter is a piece of land. It originally belonged to four persons – Awang bin Bahari, Ali bin Bahari, Morad bin Bahari and Yahya bin Bahari – each of whom held a 1/4 undivided share in it. I will refer to them as the original owners. On 12 April 1948 they entered into an agreement with the appellants' mother (now deceased) under the terms of which

they put her in possession of the land for the purpose of cultivating it for a period of three years. The consideration was a sum of 250 rial (Straits Dollars) paid by the mother to the original owners. Possession was to revert to the original owners on re-payment of the 250 rial and the expenses incurred by the mother in cultivating the land. In the event of the original owners' default, they were to sell the land to the appellants' mother at a price to be determined by the parties, credit being given to sum already paid and the monies expended by her. As it transpired, the original owners did not adhere to the terms of the 1948 agreement. Instead, they sold the land to a third party. The land then passed through several hands until the respondent purchased it in November 1997 and had it registered in his name. In May 2000, the appellants enlisted the assistance of one Azmi Ahmad to have the subject land vested in their names. In doing so, they obviously acted on the strength of the 1948 agreement. Later, by means of a forged order of the High Court dated 23 May 2000, the appellants were registered as the proprietors of the subject land. It is not disputed that it was Azmi who produced the forged order and that the appellants were entirely ignorant of the fact that the order was a forgery. When the respondent found herself displaced from the register, she brought proceedings to have herself reinstated as the registered proprietor. The judge before whom the action was tried acted on the agreed facts and the undisputed documents. He quite rightly proceeded under O. 14A to try the question of law, whether the appellants had acquired an indefeasible title despite having got themselves on the register by means of a forgery. After hearing arguments, he found for the respondent.

[2] Before us, the appellants rely on the fact that they acted *bona fide* as they were ignorant of the forgery. Their counsel argued that by reason of the decision of the Federal Court in *Adorna Properties Sdn Bhd v. Boonsom Boonyanit* [2001] 2 CLJ 133 they acquired an indefeasible title. The facts of that case are fairly well known. Boonsom Boonyanit was the owner of a valuable piece of land. The issue document of title to it was in her possession. A rogue pretending to be Boonsom applied for and obtained a duplicate title to the land and sold it to Adorna Properties. The transfer was a forgery and hence utterly useless. Yet, the Federal Court held that Adorna obtained an indefeasible title. It did so on the ground that the proviso to s. 340(3) of the

A National Land Code 1965 ("the Code") applied to s. 340(2)(b) as well. Since Adorna Properties was a *bona fide* purchaser of the land, it came within the proviso.

[3] Now, this is what the proviso says:

B

> Provided that nothing in this sub-section shall affect any title or interest acquired by any purchaser in good faith and for valuable consideration, or by any person or body, claiming through or under such a purchaser.

C Notice that the proviso applies only to a "purchaser". That expression is defined by s. 5 of the Code as "a person or body who in good faith and for valuable consideration acquires title to, or any interest in land". Hence, to be a purchaser, one has to acquire title, act in good faith and also provide valuable
D consideration.

[4] In *Midland Bank Trust Co Ltd v. Green* [1981] AC 513, the House of Lords had occasion to consider the meaning of the expression "valuable consideration" appearing in s. 20(8) of the Land Charges Act 1925 which defined "purchaser" as "any person
E ... who, for valuable consideration, takes any interest in land." Lord Wilberforce with whom the other members of the House agreed said this:

> 'Valuable consideration' requires no definition: it is an expression
F denoting an advantage conferred or detriment suffered.

[5] I think that it is quite safe to adopt that definition to the present instance. And in so doing, the first question that arises in the present case is whether the appellants' mother gave valuable
G consideration. In my judgment, the answer must be in the affirmative. She paid the original owners 250 rial, a princely sum at the time. That sum was certainly a detriment suffered by her and simultaneously an advantage conferred on the appellants' mother. The second question is this: did she acquire the title to
H the property? She may have done so if she had entered into an agreement to purchase the land in question. I say "may" advisedly because such an agreement would have been specifically enforceable and therefore make the original owners constructive trustees of the land for the mother. But that is not the nature of
I the transaction entered into. The mother in no sense therefore acquired the title to the land. The appellants resting their case on the footing that they are their mother's successors in title cannot be in a better position than the mother.

[6] In my judgment, the proviso to s. 340(3) only applies in this way. A by means of a forged instrument obtains title to land. His title is defeasible and may be defeated by the true owner. A transfers the land to B who pays A and takes the transfer of title without notice of the forgery. B gets good title to the land against the whole world including the true owner. As may be seen, that did not happen here. The learned judge was therefore correct in adopting the procedure he did and in finding for the respondent.

[7] Before I conclude I must add that I have not gone into a full discussion of s. 340 and of the relevant authorities that have considered that provision. This is to avoid unnecessary repetition of the discussions that may be found in the decisions of this court in *Abu Bakar Ismail & Anor v. Ismail Husin & Ors & Other Appeals* [2007] 3 CLJ 97 and *Au Meng Nam v. Ung Yak Chew & Ors* [2007] 4 CLJ 526.

[8] For the reasons already given, the appeal is dismissed with costs. The orders of the High Court are affirmed. The deposit in court shall be paid out to the respondent to account of his taxed costs.

[9] My learned brothers Sulong Matjeraie and Ahmad bin Haji Maarop, JJCA have seen this judgment in draft and have expressed their agreement with it.